

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ANGIONETTE HOLT)	
Claimant)	
VS.)	
)	
DEVELOPMENTAL SERVICES OF N.W. KANSAS)	Docket No. 204,896
Respondent)	
AND)	
)	
TRAVELERS INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Both respondent and claimant requested review of the Award entered by Administrative Law Judge Bruce E. Moore dated July 9, 1996.

APPEARANCES

Claimant appeared by her attorney, M. John Carpenter of Great Bend, Kansas. Respondent and its insurance carrier appeared by their attorney, Jerry M. Ward of Great Bend, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and has adopted the stipulations listed in the Administrative Law Judge's Award.

ISSUES

The respondent requested Appeals Board review of the following issue:

- (1) Whether claimant suffered a physical injury as a result of the accident that occurred at work on April 18, 1992.

- (2) If so, whether claimant's psychological condition was caused by the work-related injury.

Both respondent and claimant raised the following issue:

- (3) The nature and extent of claimant's disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds as follows:

The Administrative Law Judge found claimant suffered a head injury when a retarded resident struck claimant three or four times on the head while claimant was at work for the respondent on April 18, 1992. Furthermore, the Administrative Law Judge found the assault and resulting physical head injury aggravated a preexisting psychological problem resulting in claimant's traumatic neurosis or conversion hysteria disabling condition. The Administrative Law Judge concluded that the traumatic neurosis or conversion hysteria condition entitled claimant to a permanent partial general disability award of 63 percent based on permanent functional impairment.

The Appeals Board finds, for reasons more fully developed below, that the Administrative Law Judge's Award should be affirmed. The Appeals Board also finds that the Administrative Law Judge has set forth in his Award comprehensive findings of fact and conclusions of law that need not be repeated in this Order. Therefore, the Appeals Board adopts those findings and conclusions as its own to the extent they are not inconsistent with the findings and conclusions below.

(1)(2) Claimant started working for the respondent as a home leader on April 6, 1992, in Russell, Kansas. Claimant's job was to supervise the care and teaching of family living skills to three retarded male adults and three retarded women adults at a home owned by respondent.

On April 18, 1992, claimant was struck on the head several times by a resident using her fist. The retarded resident was upset because she was not allowed to go home over the Easter weekend. During claimant's regular hearing testimony on March 7, 1996, almost four years following the assault, claimant was unable to specifically recall the incident, was unsure whether or not she was knocked down, and was unsure whether or not she drove home from work.

Geraldine Waymaster, one of the employees claimant supervised at respondent's home, was present when the assault took place on April 18, 1992. Ms. Waymaster witnessed the assault and testified by deposition in this case. Ms. Waymaster testified the resident, that struck the claimant, was a tall, large-framed person. Ms. Waymaster testified the resident was also very strong and hit claimant in the head some three or four times with her fist.

After the assault, claimant testified she had a severe headache, was very tired, and slept all the time. Claimant was initially treated by her family physician, Dr. Jeff Brozek of Great Bend, Kansas. Dr. Brozek had claimant undergo an EEG, CAT scan, and MRI examination. All those tests resulted in negative findings. Dr. Brozek referred claimant to William M. Mallonee, M.D., in Hutchinson, Kansas, for further treatment.

Dr. Mallonee is a neurologist who had treated claimant for fainting spells in 1990. At that time, the doctor testified he prescribed medication for claimant. Claimant testified she had no further problems after taking the prescribed medication. Claimant gave a history to Dr. Mallonee that before the April 18, 1992, assault she was able to work and had no physical problems.

Dr. Mallonee saw claimant on June 11, 1992, with complaints of pain in her neck, shoulders, headaches, dizziness, and visual complaints. Dr. Mallonee diagnosed claimant with post-concussion syndrome and referred her to ElDean V. Kohrs, Ph.D., in Great Bend, Kansas, for neuropsychiatric testing.

Claimant saw clinical psychologist Dr. Kohrs on July 21, 1992. Dr. Kohrs had previously been acquainted with the claimant when she was employed at Parkview Learning Center in Macksville, Kansas. Dr. Kohrs was a consultant at that facility and described claimant as outgoing, vivacious, and hard working. Ms. Waymaster also described claimant, before the assault, as being outgoing, vivacious, and hard working. However, after the clinical interview and the battery of psychological tests were completed, Dr. Kohrs concluded claimant had a dependent personality with intellectual and memory assessment indicating organic deterioration. Dr. Kohrs had the opportunity to interview and test claimant on two other occasions, January 7, 1993, and April 20, 1993. The doctor found claimant to continue to exhibit significant memory problems, reduced motor speed, and her intellectual and memory assessment continued to support organic impairment.

Claimant was also seen by Patrick W. Stang, M.D., a psychiatrist in Great Bend, Kansas. Dr. Stang first saw claimant on August 20, 1992. Dr. Stang's initial diagnosis was post-concussion organic personality syndrome. The doctor placed claimant on medication and scheduled supporting counseling sessions. Dr. Stang treated claimant until February 14, 1994, seeing claimant on 12 separate occasions. Dr. Stang concluded, based on the history given to him by the claimant, that claimant's complaints of dizziness, headaches, and loss of short-term memory did not preexist the assault. Dr. Stang opined that claimant's permanent personality difficulties and cognitive problems were caused by the assault. Dr. Stang testified he had no indication while he was treating claimant that she was exaggerating or magnifying her symptoms.

At the request of respondent, claimant was interviewed and tested by clinical psychologist, Mitchel A. Woltersdorf, Ph.D. Dr. Woltersdorf summarized his evaluation of claimant by concluding that claimant's loss of ability to function was the result of a chronic disabled lifestyle secondary to poor emotional and social adjustment. Dr. Woltersdorf went on to testify on direct examination that claimant's current emotional status was not related to the head injury. However, on cross-examination, Dr. Woltersdorf acknowledged that

claimant had received a mild head injury at work on April 18, 1992. Dr. Woltersdorf opined that the mild head injury was not present at the time he tested the claimant. Nevertheless, Dr. Woltersdorf believed that claimant's preexisting chronic psychological condition predisposed claimant to symptoms that are out of proportion to what would be expected from the physical assault and resulting mild head injury. Additionally, Dr. Woltersdorf concluded, on cross-examination, that claimant's preexisting psychological problems made her vulnerable and the physical head injury was at least one of the conditions that caused her present hysteria neurosis condition.

The Appeals Board finds claimant's testimony, coupled with the testimony of Drs. Kohrs, Stang, and Woltersdorf prove claimant suffered a head injury as a result of the assault at work. That head injury, whether it exists at the present time or not, in Dr. Woltersdorf's opinion accelerated claimant's preexisting psychological problems resulting in claimant's present hysteria neurosis condition. Hysteria neurosis is a translation of emotional problems into physical symptoms in order for the person to better handle those problems. This transfer is taking place on an unconscious level and not purposely to create symptoms. Accordingly, Dr. Woltersdorf's diagnosis of hysteria neurosis also known as traumatic neurosis, is a compensable claim because the evidence has established that claimant suffered a work-related physical injury, has symptoms of hysteria neurosis, and the neurosis is directly traceable to claimant's head injury. See Love v. McDonald's Restaurant, 13 Kan. App. 2d 397, 771 P.2d 557, *rev. denied* 245 Kan. 784 (1989). Both Dr. Kohrs and Dr. Stang believed that the assault at work caused claimant to have a permanent organic brain injury and that the organic injury was the cause of claimant's current debilitating symptoms. Therefore, the Appeals Board finds whether one accepts that the physical head injury accelerated her preexisting psychological problems or resulted in a permanent organic injury, either diagnosis would make this a compensable claim.

(2) The Appeals Board finds claimant is entitled to a 63 percent permanent partial general disability based on Dr. Kohrs' permanent functional impairment rating. Claimant argued she was not able to work. In fact, claimant testified that the only work she had been able to do since the assault was picking up aluminum cans. Claimant, therefore, claimed that she was permanently and totally disabled as defined in K.S.A. 1991 Supp. 44-510c(a)(2). Claimant also points out that both Dr. Kohrs and Dr. Stang were of the opinion that she was not capable of working.

However, the Appeals Board finds there is no evidence in the record that claimant has even attempted to find employment since the assault. The Administrative Law Judge noted in his findings that claimant was able to travel to Alabama and provide day care for her grandchildren following the assault. Claimant also lived independently in Alabama until she decided to return to Kansas. The Administrative Law Judge also noted that he had the opportunity to personally observe the claimant testify at the regular hearing. He observed that claimant had the ability to remember past events and to answer questions submitted to her by the attorneys. The Appeals Board also finds that claimant's past educational background as a college graduate with post-college courses are important in determining whether or not claimant can perform any substantial and gainful employment. It is also

significant that the physicians who either treated the claimant or evaluated the claimant placed no permanent physical restrictions on her work activities.

No evidence was presented by claimant upon which a determination could be made concerning whether or not she was eligible for a work disability. K.S.A. 1991 Supp. 44-510e defined work disability as the loss of an injured worker's ability to perform work in the open labor market and to earn comparable wages. Permanent partial disability shall be based on the percentage of functional impairment, if it exceeds work disability.

Therefore, the Appeals Board finds that the Administrative Law Judge's conclusion that claimant's permanent partial general disability should be limited to 63 percent based on the uncontradicted functional impairment rating of Dr. Kohrs should be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Bruce E. Moore dated July 9, 1996, should be, and is hereby, affirmed in all respects.

All remaining orders contained in the Administrative Law Judge's Award are adopted by the Appeals Board as if specifically set forth in this order.

IT IS SO ORDERED.

Dated this ____ day of January 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: M. John Carpenter, Great Bend, KS
Jerry M. Ward, Great Bend, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director